

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES A. RUSSELL	)	
	)	Civil Action No. 05 - 349J
Petitioner,	)	
	)	Judge Arthur J. Schwab /
v.	)	Magistrate Judge Lisa Pupo
	)	Lenihan
DONALD KELCHNER, Superintendent;	)	
DISTRICT ATTORNEY FOR THE	)	
COUNTY OF CAMBRIA; ATTORNEY	)	
GENERAL OF THE STATE OF	)	
PENNSYLVANIA,	)	
	)	
Respondents.	)	

**MEMORANDUM ORDER**

The above captioned Petition was transferred from the Eastern District of Pennsylvania to this Court on August 26, 2005, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's Report and Recommendation filed on September 12, 2005, recommended that this petition be dismissed without prejudice before the effectuation of service because Petitioner has failed to exhaust state court remedies. It was further recommended that a certificate of appealability be denied. Service of the report and recommendation was made on the Petitioner at S.C.I. CCamp Hill, P.O. Box 200, Camp Hill, PA 17001-0200. The Petitioner was informed that in accordance with Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, he had ten (10) days to file any objections. No

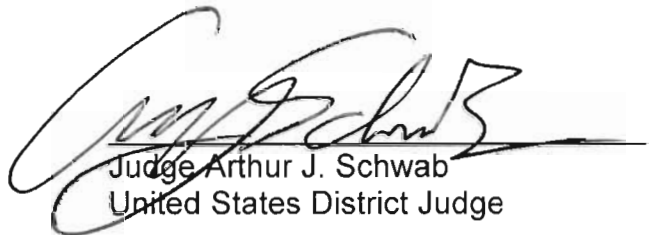
objections have been filed. After review of the petition in this case together with the report and recommendation the following order is entered:

**AND NOW**, this 11<sup>th</sup> day of October, 2005;

**IT IS HEREBY ORDERED** that the Petition for Writ of Habeas Corpus is **DISMISSED** without prejudice.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

**IT IS FURTHER ORDERED** that the Report and Recommendation of Magistrate Judge Lenihan, dated August 12, 2005, is adopted as the opinion of the court.



Judge Arthur J. Schwab  
United States District Judge

cc: Lisa Pupo Lenihan  
U.S. Magistrate Judge

James A. Russell  
DQ-1976  
S.C.I. Camp Hill  
P.O. Box 200  
Camp Hill, PA 17001-0200